

**Background:** The Tax Release titled "Payment for Personal Use of Automobile Provided by Employer," WTB 61, p. 20, provided that the use of an employer-provided automobile for personal purposes by an employee in exchange for payment is considered a lease or rental of a motor vehicle and is subject to Wisconsin sales tax.

Section 77.51(4)(c)5, Wis. Stats. (1987-88), provides that if a lessor of tangible personal property paid a Wisconsin sales tax on the acquisition of property used solely for leasing purposes, the lessor may claim a credit against the tax due on rental receipts from the property involved.

**Facts and Question 1:** Company B leases automobiles from a leasing company and pays Wisconsin sales tax to the leasing company on the lease payments. The automobiles leased are used by Company B employees for business and personal purposes. The value of the personal use of the automobile by the employee is reported as income on the employee's W-2 form. Is the value of the personal use of the automobile by the employee subject to Wisconsin sales tax?

**Answer 1:** No. Company B did not receive any gross receipts either in money or otherwise from the employee. Company B used tangible personal property (an automobile) to provide a benefit to its employees. Thus, the transaction is not subject to Wisconsin sales tax. However, if the employee had paid Company B for the personal use mileage, Company B would have received gross receipts that are subject to Wisconsin sales tax.

**Facts and Question 2:** Assume the same facts as in Question 1, except that the employee paid Company B for the personal use mileage. May Company B claim a credit for sales tax paid under sec. 77.51(4)(c)5, Wis. Stats. (1987-88)?

**Answer 2:** No. In order to claim the credit for sales tax paid, the property must be used solely for leasing purposes. Because Company B uses the automobiles for other purposes in addition to "leasing" them to its employees for personal purposes (i.e., employees use the automobiles for business purposes), no credit for sales tax paid may be claimed under sec. 77.51(4)(c)5, Wis. Stats. (1987-88).



#### 4. License, Maintenance, and Enhancement of Computer Software

**Statutes:** Sections 77.51(14)(h) and (j) and (20) and 77.52(1) and (2)(a)10, Wis. Stats. (1987-88)

**Wis. Adm. Code:** Section Tax 11.71, February 1986 Register

**Background:** Section Tax 11.71(2)(b), Wis. Adm. Code, provides that gross receipts from the retail sale, lease, rental, or license to use prewritten programs, including the maintenance and enhancement

of these programs, regardless of how it is transferred to the purchaser, is subject to Wisconsin sales and use tax. Prewritten programs are defined in sec. Tax 11.71(1)(k), Wis. Adm. Code, as programs prepared, held, or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease. They are often referred to as "canned programs."

**Facts and Question:** Company ABC licenses software for mainframe computers.

Prior to licensing mainframe software, ABC has 3 individuals visit the potential client. First, a salesman makes an on-site presentation of the system using slides. Second, a technician installs the software on the client's computer and verifies that it will operate properly. Third, a product educator trains the client's evaluation team on how to use the software. The client is allowed to use the software for 30 days prior to making its decision to purchase software from ABC.

ABC ships a distribution magnetic tape containing the system to the potential client. The client's personnel unload the tape and establish libraries for the system's modules, documentation, and other pertinent information. The ABC technician visits the client and verifies that the installation is correct by executing a number of sample tests distributed with the system. The ABC technician then verifies that the system works properly and is executing in conjunction with the client's programs.

ABC also provides the following additional training materials that are priced separately: self-help guides, slide based training, training videos.

The complexity of the product is such that in order to use it effectively, a client must purchase the Maintenance and Enhancement (M&E) ABC offers. A client subscribing to M&E receives phone and other support as well as new updates of the software that will run with new updates of other vendors' software.

ABC software products are for testing and debugging other software. They assist programmers in isolating problems in their programs rapidly. ABC does not modify its software in order to run under any of several pre-specified compatible environments. ABC does not modify its software where a computer environment is not compatible with the software, as it requires making a practically new product. Modification is made only when a new market presents itself. TESTBUG, one of ABC's software products will support testing and debugging of COBOL programs, without modification, on any computer running the same operating systems.

The cost of ABC products range from \$19,000 to \$75,000, depending on options selected. The average price is about \$40,000.

Is the software ABC sells or licenses subject to Wisconsin sales and use tax. Is the charge for the maintenance and enhancement of the licensed software subject to Wisconsin sales or use tax?

Answer: The software sold or licensed in pre-existing form by ABC is characterized as “canned software” and is subject to Wisconsin sales and use tax. The annual charge for maintenance and enhancement of licensed canned software is also subject to Wisconsin sales and use tax.

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##### 5. Sale of Waste Removal Services and Transfer of Tangible Personal Property

Statutes: Sections 77.51(5) and 77.52(2)(a), Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 11.05(3)(i), October 1987 Register

Background: Section 77.52(2)(a), Wis. Stats. (1987-88), imposes a Wisconsin sales tax on the sale of certain services listed. Waste removal services are not included in the taxable services listed. Section Tax 11.05(3)(i), Wis. Adm. Code, provides that gross receipts of governmental units from special assessments and fees for garbage or trash removal is not subject to Wisconsin sales tax. However, sales of bags or receptacles for garbage or trash are subject to Wisconsin sales tax.

Facts and Question 1: A city government provides that if city residents want their yard waste removed by the city, the yard waste must be put in a specific type of plastic bag. A resident must buy the plastic bags at City Hall or certain retail stores. The charge by the city to the resident for each bag is 75¢. This 75¢ charge is for the cost of the bag (18¢), the cost of the waste removal (40¢), and the cost of the disposal site and “working” the waste to the point of decomposition (17¢).

Is the 75¢ charge by the city to the resident for the plastic bag subject to Wisconsin sales tax?

Answer 1: No. Under sec. Tax 11.05(3)(i), Wis. Adm. Code, the sale of waste removal services is not subject to Wisconsin sales tax. The primary reason the 75¢ is paid is to obtain waste removal service. The transfer of the plastic bag is incidental to the selling of the waste removal service, even though the bag is necessary to providing that service.

Facts and Question 2: A city government provides that all glass, aluminum, and plastic waste will be recycled. To accomplish this, city residents must separate their trash and put it in specially color coded bags which are sold by the city. The cost is 25¢ per bag. The receipts from the sale of bags will be held in a special account to cover future landfill closure costs. Residents pay a separate fee for trash removal on their utility bills.

Are the sales of the plastic bags subject to Wisconsin sales tax?

Answer 2: Yes. The sale of the plastic bags is separate from collecting a fee for trash removal services. The Wisconsin Statutes

provide that sales of tangible personal property are subject to Wisconsin sales tax, unless otherwise exempt.

Facts and Question 3: A city government provides that city residents, who wish to have their trash removed, must affix a special sticker to their trash bags or receptacles. The stickers are sold by the city at several retail stores. The stickers replace the charge to residents for trash removal on city utility bills.

Is the sale of the stickers subject to Wisconsin sales tax?

Answer 3: No. The sale of stickers is actually a fee for garbage or trash removal and is not subject to Wisconsin sales tax under sec. Tax 11.05(3)(i), Wis. Adm. Code. The transfer of the sticker is incidental to the sale of the trash removal service.

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##### 6. Supplies Used in Delivering Newspapers

Statutes: Sections 77.51(14)(k) and 77.54(6)(b), Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 11.15, September 1984 Register

Background: Section 77.54(6)(b), Wis. Stats. (1987-88), provides that the gross receipts from the sale, storage, use, or other consumption of containers, labels, sacks, cans, boxes, drums, bags, or other packaging materials used in packing, packaging, or shipping tangible personal property are not subject to Wisconsin sales and use tax if the items are used by the purchaser to transfer merchandise to customers. The common and approved meaning of “merchandise” is commodities or goods that are bought and sold in business. Section Tax 11.15(1)(b), Wis. Adm. Code, further provides that packaging materials include property used inside a package to shape, form, preserve, stabilize, or protect the contents.

Section 77.51(14)(k), Wis. Stats. (1987-88), provides that a sale includes the sale of tangible personal property to a purchaser even though the property is transferred by the purchaser to some other person without valuable consideration.

Facts and Question 1: Company ABC produces and prints a weekly newspaper. Each newspaper is wrapped around a plastic tube and inserted into a plastic bag before delivering. The plastic tube keeps the newspaper from being folded or wrinkled during and after delivery. Where permitted, Company ABC installs hooks free of charge on a customer’s premises that the plastic bags can be hung on when delivered to keep the newspapers from being damaged. Company ABC charges \$15 annually to subscribe to the newspaper.

Are the plastic bags, plastic tubes, and hooks purchased by Company ABC subject to Wisconsin sales or use tax?

Answer: The plastic bags are exempt from Wisconsin sales and use tax since they are containers used to transfer tangible personal property from ABC Company to their customers. The plastic tubes are exempt from Wisconsin sales and use tax since they are packaging materials used to protect or stabilize the newspapers being delivered. The hooks Company ABC installs are not exempt from Wisconsin sales or use tax as they are not packaging materials. Therefore, Company A is subject to Wisconsin sales or use tax on its purchase or use of the hooks.

Facts and Question 2: Assume the same facts as in Facts and Question 1 except that Company ABC does not charge for the newspaper. Are the plastic bags, plastic tubes, and hooks purchased by Company ABC subject to Wisconsin sales or use tax?

Answer 2: Yes. Each of the items purchased is subject to Wisconsin sales or use tax because giving the newspaper away free is not the "transfer of merchandise." Since the newspaper is not bought by a customer or sold by Company ABC, it is not merchandise and, therefore, the exemption under sec. 77.54(6)(b), Wis. Stats. (1987-88), does not apply.

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## 7. "Transport" Natural Gas and Transportation Charges

Statutes: Sections 77.51(4)(a)3 and (4)(b)5, 77.51(14r), 77.51(15)(a)3 and (15)(b)3, and 77.51(20), Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 11.94(1)(a) and (c) and (2)(a), July 1987 Register

### A. Terms

1. *Producer.* The person who extracts natural gas from the ground generally in Texas, Oklahoma, and Louisiana, but also other locations.

2. *Broker/Marketer.* The Broker/Marketer purchases natural gas from the Producer and resells to the End User or the Local Utilities. Broker/Marketer may or may not have nexus in Wisconsin.

3. *Interstate Pipeline.* The Interstate Pipeline company owns and operates the pipeline which brings the natural gas from the out-of-state gas fields to Local Utilities (the city gate) in Wisconsin. Most Interstate Pipelines operate as contract carriers, transporting property owned by others for a fee.

4. *Local Utility or LDC (local distribution carrier).* These terms are interchangeable. The Local Utility (LDC) owns and operates the local distribution network, takes natural gas from the Interstate Pipeline at the city gate and delivers or meters the gas to the End User.

5. *End User.* The End User is the actual consumer of the natural gas. In most cases the End User is heating a very large area or more commonly burns a large volume of natural gas in a manufacturing, fabricating, or other production facility (e.g., a foundry or heat treating plant).

6. *Transport gas.* Prior to 1985, end users purchased natural gas only from the Local Utilities. Beginning in 1985, this situation is changed. End Users now may shop around for the best price and may purchase gas directly from the Producer, from a Broker/Marketer, or from the LDC. Gas acquired in this manner is referred to as transport gas.

7. *Commodity.* The commodity is the natural gas.

8. *City gate.* The city gate is the point when the Interstate Pipeline is connected to the Local Utilities pipeline.

9. *At the meter.* The meter is the point where the End User takes natural gas from the LDC. The meter, of course, records the End User's usage.

10. *Transportation Agent.* The Interstate Pipeline and the LDC are transporters of the commodity. As contract carriers they are deemed the "transportation agent" of the person who hires them to provide the transportation and/or metering service.

11. *Purchasing Agent.* A Purchasing Agent is a person who operates as a true agent for sales and use tax purposes in purchasing natural gas and transportation services on behalf of the End User. The burden of proving a person is a purchasing agent rather than the retailer of the gas is with the person making the claim. Anyone claiming purchasing agent status is urged to contact the Department of Revenue (c/o Administration Technical Services, Post Office Box 8933, Madison, WI 53708) for a determination. It is presumed that all persons who do not have this determination are the retailers of any gas they provide.

12. *Nexus.* Nexus, as used in this Tax Release, means that the person having "nexus" is engaged in business in Wisconsin for sales or use tax purposes, as described in Section Tax 11.97, Wis. Adm. Code.

### B. Statutes

1. Under sec. 77.51(4)(a)3 and (15)(a)3, Wis. Stats. (1987-88), gross receipts and sales price include "... The cost of transportation of the property prior to its sale ..." Therefore such transportation charges are subject to Wisconsin sales or use tax.

2. Under sec. 77.51(4)(b)5 and (15)(b)3, Wis. Stats. (1987-88), gross receipts and sales price do not include "Transportation charges separately stated, if the transportation occurs after the sale of the property ..." Therefore such transportation charges are not subject to sales or use tax.

3. Under sec. 77.54(14r), Wis. Stats. (1987-88), "A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or his agent to the purchaser or his agent . . ." The term "agent" as used in this statute includes both the "transportation agent" and "purchasing agent" as defined in Part A of this Tax Release.

Note: This statutory definition of when and where the sale occurs is independent of title for insurance purposes and as defined under the Uniform Commercial Code. Thus, when and where the sale occurs, depends on whether the pipeline and/or the LDC acts as the "transportation agent" of the buyer or the seller.

4. Section 77.51(20), Wis. Stats. (1987-88), includes natural gas in the definition of "tangible personal property."

### C. Facts and Questions

**Facts and Question 1:** The End User has its own transport gas expert on its staff and contracts directly with the Producer, the Interstate Pipeline, and the LDC for the purchase of, and the transportation and metering of, the commodity. The Producer does not have nexus in Wisconsin.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 1:** The commodity is subject to sales or use tax. Since the Producer does not have nexus, the End User reports use tax on its cost of the commodity.

Since the End User procured the services of the Interstate Pipeline and the LDC, they are "transportation agents" of the End User (purchaser). The sale of the natural gas occurs when the Producer puts the gas into the Interstate Pipeline at the gas field. The subsequent transportation charges by the Interstate Pipeline and the LDC are not subject to sales or use tax.

**Facts and Question 2:** The End User purchases natural gas from a Broker/Marketer who does not have nexus in Wisconsin and who is not registered to collect the Wisconsin sales or use tax. The Broker/Marketer arranges with the Interstate Pipeline to deliver the gas to the city gate. The Interstate Pipeline will bill the End User directly for its transportation charges. The End User arranges with the LDC for the local transportation and metering.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 2:** The commodity is subject to sales or use tax. Since the Broker/Marketer does not have nexus and does not voluntarily collect the use tax in Wisconsin, the End User must report use tax on its cost of the commodity.

Since the Broker/Marketer (the seller of the commodity) also procured the services of the Interstate Pipeline, the Interstate

Pipeline is the "transportation agent" of the Broker/Marketer. The sale occurs when the Interstate Pipeline transfers the gas to the LDC at the city gate. The transportation charges of the Interstate Pipeline are subject to tax. The charges for the local transportation/metering occur after the sale and thus are not subject to tax. Since the Broker/Marketer does not have nexus in Wisconsin, the End User must report use tax on the cost of transportation by the Interstate Pipeline.

**Facts and Question 3:** Assume the same facts as Facts and Question 2 except the Broker/Marketer does have nexus in Wisconsin.

How do the tax consequences differ from Answer 2?

**Answer 3:** The Broker/Marketer's gross receipts from the sale of natural gas are subject to sales or use tax. The gross receipts of the Interstate Pipeline are not subject to sales tax because the Interstate Pipeline is not selling tangible personal property but rather performing a nontaxable transportation service on property owned by others. However, under sec. 77.51(15)(a)3 the End User must report and pay use tax on the cost of the Interstate Pipeline's transportation charge because the sale occurs after the pipeline transportation service.

**Facts and Question 4:** The LDC purchases natural gas from the Producer which it resells to the End User. The LDC has the gas delivered to the city gate under its existing contract with the Interstate Pipeline.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 4:** The LDC is the seller (retailer) of the natural gas. The sale of the gas occurs when the End User takes possession at the meter. All charges to the End User for transporting the gas to the meter are subject to sales or use tax. The LDC has nexus in Wisconsin, so the LDC's entire charge (including the cost of the commodity, the Interstate Pipeline charge and its own transportation/metering charge) is subject to sales tax.

**Facts and Question 5:** A "purchasing agent" (for example, the LDC or the Broker/Marketer) acts on behalf of the End User. The purchasing agent arranges for the purchase of the commodity from the Producer as well as the subsequent transportation via the Interstate Pipeline and the LDC. The Producer does not have nexus in Wisconsin.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 5:** The commodity is subject to sales or use tax. The "purchasing agent" is acting on behalf of and in the place of the End User and is not the seller or retailer of the natural gas. The Producer is the seller (retailer) of the natural gas and since the Producer does not have nexus in Wisconsin the End User reports use tax on its cost of the commodity.

Since the "purchasing agent," acting on behalf of the End User

arranged for the transportation, the Interstate Pipeline is the "transportation agent" of the End User (buyer). The sale occurs when the Producer puts the gas into the Interstate Pipeline. Thus, transportation via Interstate Pipeline and LDC occur after the sale and are not subject to sales or use tax.

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## 8. When Is a Sale in Wisconsin for Purposes of Imposing Wisconsin Sales Tax

**Statutes:** Sections 77.52(14)(intro.) and (k) and (14r), 77.52(1) and 77.54(1), Wis. Stats. (1987-88)

**Wis. Adm. Code:** Section Tax 11.94, July 1987 Register

**Background:** The Commerce Clause of the United States Constitution provides that states are prohibited from imposing, by any form of taxation, any direct or immediate burden on interstate or foreign commerce. As a result, Wisconsin sales tax may only be imposed on sales where transfer of possession occurs in Wisconsin. Therefore, under sec. 77.54(1), Wis. Stats. (1987-88), sales of tangible personal property or taxable services delivered outside Wisconsin by a seller or a seller's agent are exempt from Wisconsin sales tax as such taxation would be a violation of the Commerce Clause of the U.S. Constitution.

**Question:** When is a sale subject to Wisconsin sales tax?

**Answer:** A sale is subject to Wisconsin sales tax when the transfer of possession of tangible personal property from a seller or the seller's agent to a purchaser or purchaser's agent takes place in Wisconsin. Under sec. 77.51(14r), Wis. Stats. (1987-88), it is provided that a common carrier or the United States Postal Service is considered to be an agent of the seller regardless of the f.o.b. point and regardless of who pays the freight or postage.

Section 77.51(14)(k), Wis. Stats. (1987-88), further provides that a taxable sale of tangible personal property to a purchaser occurs in Wisconsin even though the property may be consumed by some other person to whom the purchaser transfers the property without valuable consideration (e.g., gifts).

The following examples illustrate when a sale is subject to Wisconsin sales tax and when it is not.

**Example 1:** John, who lives in Florida, goes into an art gallery in Wisconsin and purchases a painting for \$1,000 for his office in Florida. John leaves the gallery with the painting after paying for it and returns to Florida with the painting.

The sale of \$1,000 is subject to Wisconsin sales tax because John, the purchaser, took possession of the painting in Wisconsin.

**Example 2:** Assume the same facts as Example 1 except that rather than taking the painting with him back to Florida, he has it shipped

by a common carrier (e.g., UPS) to Florida. The seller arranged for the common carrier to pick it up at the gallery and added a shipping charge of \$10 to the price John paid for the painting.

The total sale of \$1,010 is not subject to Wisconsin sales tax because possession of the painting is transferred by the seller's agent to John in Florida.

**Example 3:** Mary goes to a store in Wisconsin and buys a pair of candlesticks with a price of \$100. She arranges with the store to have the candlesticks mailed to her niece in New York who is getting married. The store adds the \$10 charge for mailing to the price of the candlesticks. Mary pays for the candlesticks and the cost of mailing the gift for a total of \$110.

The sale is not subject to Wisconsin sales tax because possession of the candlesticks is transferred in New York when the candlesticks are delivered by the U.S. Postal Service (the seller's agent) to Mary's niece.

**Example 4:** Assume the same facts as in Example 3 except that the store does not mail the candlesticks to New York. Instead, Mary takes them from the store to the nearest post office and mails the candlesticks to New York at a cost of \$10.

The sale of the candlesticks (\$100) is subject to Wisconsin sales tax because possession transfers at the time the store gives Mary the candlesticks in Wisconsin. Because Mary arranged for the mailing of the candlesticks, the U.S. postal service is no longer an agent of the seller (store). The \$10 charge for mailing is not subject to Wisconsin sales tax because transportation, by itself, is a nontaxable service if it occurs after the sale.

**Example 5:** Sue lives in Illinois. She goes to a Wisconsin appliance store and purchases a big screen television for \$1,400. Sue arranges with the appliance store to have the television shipped to her home in Illinois at an additional cost of \$30.

The sale of \$1,430 is not subject to Wisconsin sales tax because possession of the TV is transferred from the seller's agent to Sue in Illinois.

**Example 6:** Assume the same facts as in Example 5 except that Sue, for \$30, contracts with a private delivery company to pick up the TV in Wisconsin at the appliance store and deliver the TV to Illinois.

The sale of \$1,400 is subject to Wisconsin sales tax because possession of the TV is transferred by the appliance store to Sue in Wisconsin at the time the private delivery company picks up the TV. The delivery company is an agent of Sue (the purchaser). The \$30 charge for delivery is not subject to Wisconsin sales tax as it is a nontaxable service being provided.

**Example 7:** Assume the same facts as in Example 5 except that Sue rents a truck to move the TV to Illinois.

The sale of the TV is subject to Wisconsin sales tax because

possession of the TV is transferred by the store to Sue in Wisconsin. The \$30 charge for renting the truck is also subject to Wisconsin sales tax because the rental or lease of tangible personal property is subject to Wisconsin sales tax.

**Example 8:** Tom goes into a Wisconsin clothing store and tries on various pieces of clothing. Tom buys the clothing for \$100 and arranges with the store to have it shipped to his home in Minnesota for an additional \$5.

The sale of the clothing and charge for shipping (\$105) is not subject to Wisconsin sales tax because possession of the clothing is transferred from the seller's agent to Tom in Minnesota.

**Example 9:** Assume the same facts as in Example 8 except that Tom has the clothing shipped to his mother's home in Wisconsin.

The sale of clothing and charge for shipping (\$105) is subject to Wisconsin sales tax because possession is transferred from the seller's agent to Tom's mother at his mother's home in Wisconsin.



## PRIVATE LETTER RULINGS

*"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.*

*The number assigned to each ruling is interpreted as follows: The first two digits are the year issued, the next two digits are the week issued, and the last three digits are the number in the series of rulings issued that year. "Issued" means when the ruling is available to be published (80 days after being mailed to the requestor). The date following the 7-digit number is the date the ruling was mailed to the requestor.*

*Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to get a Private Letter Ruling From the Department of Revenue," contains additional information about private letter rulings.*

W8937006, June 27, 1989

**Type Tax:** Homestead Credit

**Statutes:** Section 71.52(7), Wis. Stats. (1987-88)

**Issue:** Owner of homestead where property is held by an estate

This letter responds to your request for a private letter ruling regarding the amount of homestead credit to which you are entitled for 1987 and 1988.

Information provided in your letter, in two follow-up letters, and in a telephone conversation indicates the following:

Your father died on September 22, 1986, and his will bequeathed all his assets, including his residence in Wisconsin, equally to his two children, namely you and your brother. You and your brother had resided in the residence prior to your father's death and continued to reside there through part of 1988 when it was sold by the estate. Since the estate had insufficient cash and personal property to pay liabilities, you and your brother paid numerous bills, including real estate taxes on the residence in 1987 and 1988. Both you and your brother were over age 18 as of December 31, 1987, so in that respect you qualified to claim a homestead credit.

On January 8, 1987, you and your brother paid the 1986 real estate taxes of \$1,968.28 on the residence at Wisconsin, with your personal funds. Your brother purchased a cashier's check and you reimbursed him for your one-half share of the taxes.

The 1987 property taxes were \$1,919.31. Partial payments of these taxes were made on January 25, 1988, (\$639.77) and on March 25, 1988, (\$319.89), and the balance of \$972.45 was paid with the proceeds from the sale of the residence, at the closing.

You moved from the residence to your present dwelling in the latter part of March 1988. The property was sold by the estate on April 21, 1988, and in addition to the remaining 1987 property taxes, the pro rata share of 1988 property taxes were credited on the closing statement. The remaining proceeds from the sale were transferred to the estate to pay outstanding funeral, medical, and miscellaneous expenses, and the balance of approximately \$32,000 was distributed to you and your brother.

Both you and your brother filed 1987 individual income tax returns. You filed a 1987 Wisconsin homestead credit claim in December 1988 and submitted a copy of the ruling request with it. You do not know whether your brother filed a claim or not. Prior to filing your 1987 claim, you were informed by a Wisconsin Department of Revenue employe that the taxes which you paid must be considered "rent" for purposes of determining your allowable homestead credit.

You have also filed a 1988 Wisconsin homestead credit claim, based solely on the rent you paid for your homestead for 1988.

You feel you are entitled to claim a homestead credit based on the amount of property taxes paid as though you were a one-half owner of the property, and you cite the following reasons:

- The real estate taxes which you were advised were allowable as rent were not "arm's length rent" as required by statute.